

**Tennessee Department of Transportation
Division of Materials and Tests**

Procedures for Proprietary Products Certifications, Public Interest Findings and Experimental Products (SOP 7-1)

Purpose- The purpose of this document is to establish the procedures and qualifications for Proprietary Products Certifications, Public Interest Findings and Experimental Products.

Background- [23 CFR 635.411](#)

Guidelines [Q&A on 23 CFR 635.411](#)

Under 23 USC 112(a), "In all cases where the construction is to be performed by the State transportation department or under its supervision, a request for submission of bids shall be made by advertisement unless some other method is approved by the Secretary.

The Secretary shall require such plans and specifications and such methods of bidding as shall be effective in securing competition.

The FHWA has interpreted this clause to require competition not only for the award of the contract, but to also require competition for the various materials and processes involved in the work.

The specification of a particular product may restrict competition as the pool of available products is reduced to the product selected. In some cases, however, the need for a particular product outweighs the need to procure products competitively. 23 CFR 635.411 provides the regulatory authority for FHWA's participation in the cost of a patented or proprietary product.

Procedures-

A shell letter (provided on this website) shall be submitted by the appropriate Division Director (following the guidelines for Title 23 CFR 635.411) to the Departments Assistant Chief Engineer of Operations.

If a product or process is deemed necessary for use under one of the following categories it will be approved for use for the time appropriated and listed on the Departments website. When the appropriated time is up the approval will be archived for record keeping purposes.

Patented or Proprietary Products

Certification:

As used in 23 CFR 635.411(a) (2), the written and signed statement of an appropriate contracting agency official certifying that a particular patented or proprietary product is either:

- a. Necessary for synchronization with existing facilities; or
- b. A unique product for which there is no equally suitable alternative.

Synchronization:

As used in 23 CFR 635.411(a) (2), providing a product that matches specific current or desired characteristics of a project. Synchronization may be based on:

- Function (the proprietary product is necessary for the satisfactory operation of the existing facility),
- Aesthetics (the proprietary product is necessary to match the visual appearance of existing facilities),
- Logistics (the proprietary product is interchangeable with products in an agency's maintenance inventory),

Or any combination thereof.

In addition, it may be advisable to evaluate the following factors as they relate to synchronization:

- Lifecycle (the relative age of existing systems that will be expanded and the remaining projected life of the proposed proprietary element in relation to the remaining life of the existing elements),
- Size/extent of products and systems to be synchronized to/with, and the relative cost of the proprietary elements compared with replacing the elements requiring synchronization.

Public Interest Finding (PIF)

As used in 23 CFR 635.411(c), an approval by the FHWA Division Administrator, based on a request from a contracting agency, that it is in the public interest to allow the contracting agency to require the use of a specific material or product even though other equally acceptable materials or products are available.

Contracting Agency – Any entity administering a contract using Federal aid highway funds. Includes State DOTs, Local Public Agencies (LPAs), and other agencies that may be administering such contracts.

State Department of Transportation (State DOT) – The relevant department of any State charged by its laws with the responsibility for highway construction; also State Transportation Agency (STA), the "State"

Local Public Agencies (LPAs) – Any State DOT sub recipient of Federal-aid highway funds.

Experimental Products

As used in 23 CFR 635.411(a)(3), a patented or proprietary product used for research or for a distinctive type of construction on relatively short sections of road on an experimental basis.